IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.11.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE S.K. KRISHNAN

Writ Petition No.41837 of 2002

and WPMP.No.61836 of 2002

M. Ganesan .. Petitioner

vs.

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Commercial Taxes and Religious
   Endowments Department
   Secretariat
   Chennai 600 009.

2. The Inspector General of Registration
   Santhome High Road
   Chennai 600 028.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus as stated therein.

For petitioner : Mr. A. Amalraj
For respondents : Mr. E. Sampathkumar
Government Advocate

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 26.11.2001 made in O.A.No.5906 of 1998, the petitioner has filed the above writ petition to quash the same as

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null, void, illegal and invalid and consequently direct the respondents 1 and 2 to disburse arrears of increment stopped pursuant to punishment order dated 15.04.1998 / 11.05.1998, apart from regulating the pay scale including all the increments together with paper promotion as Sub-Registrar Grade-I on par with his juniors with all attendant benefits giving weightage to his pensionary benefits, etc.,

2. According to the petitioner, he entered Government service as Section Writer on 07.09.1965 and after serving in the Registration Department in various capacities, he retired from service, after attaining the age of superannuation on 30.11.2001. The second respondent in his proceedings dated 21.10.1997, issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (in short "the Rules"), alleging certain irregularities occurred in remittance of collection amount due to lack of supervision in the remittance duty. On receipt of the charge memo, he made a demand from the Sub-Registrar, Pallipalayam, requesting him to furnish certain documents, so as to enable him to submit an effective explanation. However, there was no response from him, and with the available materials, he submitted his explanation / objection on 26.11.1997. The second respondent in his proceedings dated 15.04.1998 / 11.05.1998, without conducting any enquiry and giving opportunity to defend, as contemplated under Rule 17(b) of the Rules, has straight-away issued an order of punishment stopping increment for three years without cumulative effect. Questioning the same, he filed O.A.No.5906 of 1998 before the Tamil Nadu Administrative Tribunal, Chennai. By the impugned order dated 26.11.2001, the Tribunal, after finding that there is no procedural irregularity or illegality, dismissed his application; hence, the present writ petition.

3. Heard Mr. A. Amalraj, learned counsel for the petitioner and Mr. E. Sampathkumar, learned Government Advocate for respondents 1 and 2.

4. The learned counsel appearing for the petitioner, after taking us through the charge memo, his explanation, final order dated 15.04.1998 / 11.05.1998 and the impugned order dated 26.11.2001, would submit that having mentioned that action has to be taken under Rule 17(b) of the Rules, the second respondent committed an error in passing final order under Rule 17(a). He also contended that even under Rule 17(a), in the light of the fact that the petitioner had demanded certain documents, which were not provided, and submitted his explanation disputing the allegations, the second respondent ought to have conducted an enquiry before passing the order. The above material aspects have not been

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considered by the Tribunal and hence committed an error in dismissing his original application.

5. On the other hand, Mr. E. Sampathkumar, learned Government Advocate, would submit that action was initiated under Rule 17(a) and before passing the order of punishment, petitioner was given adequate opportunity and in fact he submitted his explanation and the same was duly considered, and hence there are neither procedural lapses nor violation of principles of natural justice.

6. We have carefully considered the materials placed and the rival contentions.

7. Coming to the first contention of the learned counsel for the petitioner, in the charge memo though the authority, viz., Inspector General of Registration referred to Rule 17(b), in the "Subject", in the concluding paragraph, a reference was made only to Rule 17(a). The relevant portion reads as under.

> " எனவே, அவர் மீது தமிழ்நாடு குடிமைப்பணியாளர் பணி (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளின் விதி 17(எ)ன் கீழ் நடவடிக்கை எடுக்க எண்ணமுள்ளது, "

Further, the final order dated 15.04.1998 refers only Rule 17(a). Therefore, we are satisfied that the action was taken against the petitioner only under Rule 17(a) and not under Rule 17(b).

8. Coming to the other contention that even for minor penalty under Rule 17(a), according to the learned counsel for the petitioner, adequate opportunity has to be given, for which, he relied on a decision of the Supreme Court in the case of O.K. Bhardwaj vs. Union of India reported in 2001 (9) SCC 180. In the said case, wherein the High Court has arrived at a proposition that in the case of minor penalties, it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty. When the matter was taken up to the Supreme Court, the Hon'ble Supreme Court has not agreed with the said proposition and observed that,

> ".... Even in the case of minor penalty, an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. "

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He also relied on the case of University of Bihar vs. Kamal Deo Thakur reported in 2005 (9) SCC 278. In that case, the first respondent before the Supreme Court did not join duty at the transferred place despite publication of notice in a local newspaper and on the failure to join there, the University (the employer), terminated him from service without enquiry. The Supreme Court held that the University ought to have conducted an enquiry and given an opportunity to the first respondent to defend his case. Inasmuch as the said case relates to termination of service, the above judgment is not helpful to the petitioner's case. However, in the earlier judgment, viz., 2001 (9) SCC 180 (cited supra), Supreme Court held that even in the case of minor penalty, an opportunity should be given to the delinquent employee to have his say or submit him explanation with respect to the charges leveled against him. Rule 17(a) also provides that where it is proposed to impose on a member of a service of a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in Rule 8 or in Rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed.

9. In the present case, it is not in dispute that pursuant to the charge memo dated 21.10.1997, the petitioner submitted his explanation on 26.11.1997 and the same was considered in detail in the final order dated 15.04.1998. In such a circumstance, the procedure followed and the order passed by the second respondent satisfied the mandate provided under Rule 17(a) and also the dictum laid down by the Supreme Court in 2001 (9) SCC 180.

10. It is useful to refer the recent decision of the Supreme court in the case of Ganesh Santa Ram Sirur vs. State Bank of India reported in 2005 (1) SCC 13, wherein their Lordships referred to the principles laid down in the case of Union of India vs. Jesus Sales Corporation reported in 1996 (4) SCC 69, which reads as under.

> ".... When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before

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such quasi judicial authority, who is expected to apply his judicial mind to the issues involved."

As rightly pointed out by the learned Government Advocate, it is not a case of no notice issued and no opportunity given to the petitioner. Though the Tribunal has not discussed all the above details and the order is very brief, in the light of the above reasons we do not find any valid ground for interference. Consequently, the writ petition fails and the same is dismissed. No costs. Consequently, connected WPMP., is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
   Commercial Taxes and Religious
   Endowments Department
   Secretariat
   Chennai 600 009.

2. The Inspector General of Registration
   Santhome High Road
   Chennai 600 028.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai 600 104.

1 cc to M/s. A. Amalraj, Advocate, SR. 44739
1 cc to Govt. Pleader, SR. 44748

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